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10/760,129	01/16/2004	Peter S. Brown	ENDOV-63893	7202
60117	7590	09/24/2007		
RATNER PRESTIA P.O. BOX 980 VALLEY FORGE, PA 19482			EXAMINER MILLER, CHERYL L	
			ART UNIT 3738	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/760,129
Filing Date: January 16, 2004
Appellant(s): BROWN ET AL.

MAILED
SEP 24 2007
GROUP 3700

Glenn M. Massina (Registration No. 40,081)
James C. Abruzzo (Registration No. 55,890)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 21, 2007 appealing from the Office action mailed December 22, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

Please note that the summary of the claimed subject matter is correct. Although applicant has not made reference specifically to "claim 1", it is the only independent claim and the claims scope and limitations are appropriately summarized in the brief's summary.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

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The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner:

112 1st paragraph rejection over claim 2.

102(e) rejection of claims 1, 2, 4, 7, 8, 28-30, and 33 over Wolinsky (US 6,840,956).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,840,956 B1	Wolinsky et al.	01-2005
5,749,920	Quiachon et al.	05-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 7, 8, and 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolinsky et al. (US 6,840,956 B1, cited previously) in view of Quiachon et al. (US 5,749,920, cited previously). See Appendix I. Wolinsky discloses a method of protecting a sensor attached to a graft (col.5, lines 38-45) comprising attaching a sensor (12) to a graft (14), folding portions of the graft to cover the sensor (see either fig.3A or 3B) and placing the graft

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(14) within a catheter (32; col.5, lines 38-59). Wolinsky discloses the use of markers (col.6, lines 13-16), however is silent to mention the specific placement of the markers. Quiachon teaches in the same field of vascular grafts, placement of a plurality of markers (197 shown placed along the length of the graft and diametrically opposed sides of the graft; fig.23, 24) along the length of the graft (55) such that the graft may be detected during deployment (col.14, lines 18-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to combine Wolinsky's graft having a use of radiopaque markers, with Quiachon's teaching of exact placement of the markers directly onto the graft surface such that the graft may be detected during delivery. Wolinsky's graft having Quiachon's marker placement, inherently folds over the markers as well as the sensor since Wolinski's graft is folded several times, leaving less than 50%, more likely 1/3, of the graft exposed (non-covered), see figs.3a, 3b and col.5, lines 38-48; and since Quiachon's markers are placed diametrically 180 degrees apart from one another, at least one line of markers inherently must be covered and protected (since they are 50% the distance of the graft circumference away from each other; and less than 50% of Wolinski's graft is exposed).

Referring to the dependent claims, Wolinsky discloses a single or multi folded section of graft material covering the sensor (figs.3A, 3B; attachment 1) or four layers of folds cover the sensor (attachment 1). Wolinsky discloses configuring the sensor such that it is perpendicular to a radius of the graft (see attachment 2). Wolinsky discloses configuring the graft to an H-shape (fig.3A may be considered an H-shape as it is similar to the configuration shown by applicant's own figures; see attachment 3).

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It is further noted, that a specific type of “marker” has not been claimed, and although Wolinsky discloses use of “markers” at col.6, lines 13-15, other elements disclosed by Wolinsky (such as end stents made of radiopaque metal, col.4, lines 24-28; or additional biosensors, plurality, col.4, lines 47-60) may be considered “markers”.

(10) Response to Argument

The 102 (e) rejection of the claims over Wolinski has been withdrawn by the examiner, however the examiner has included her comments with respect to applicant’s arguments to this Wolinsky patent. Wolinsky discloses the use of a plurality of markers on the graft, however fails to show any particular placement in the figures. Wolinsky does not disclose strategically placing the markers at non-covered/folded locations of the graft therefore it would seem they would be randomly place and obvious if not inherently covered and protected by the graft. Markers are well known in the art to be placed scattered on graft surfaces so that the graft may be visualized during implantation. When markers are placed over the surface of the graft as known in the art, some or at least one marker would seemingly be covered by a folded graft section of Wolinsky inherently or obvious if not inherently, since markers are usually placed randomly or evenly distributed across the graft and a large surface area of Wolinsky’s graft is folded and covered.

It is further noted, that a specific type of “marker” has not been claimed, and although Wolinsky discloses use of “markers” at col.6, lines 13-15, other elements disclosed by Wolinsky (such as end stents made of radiopaque metal, col.4, lines 24-28; or additional biosensors, plurality, col.4, lines 47-60) may be considered “markers”.

The applicant has argued (with respect to the held 103 rejection) that the markers of Quiachon would not inherently be covered by Wolinsky’s graft. The examiner disagrees.

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Wolinsky's graft having Quiachon's marker placement, inherently folds over the markers as well as the sensor since Wolinsky's graft is folded and overlapped several times, leaving less than 50%, more likely only 1/3, of the graft exposed (non-covered), see figs.3a, 3b and col.5, lines 38-48; and since Quiachon's markers are placed diametrically 180 degrees apart from one another, at least one line of markers inherently must be covered and protected (since they are 50% the distance of the graft circumference away from each other; and less than 50% of Wolinsky's graft is exposed).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

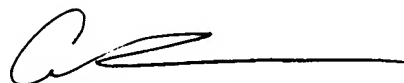
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Cheryl Miller/

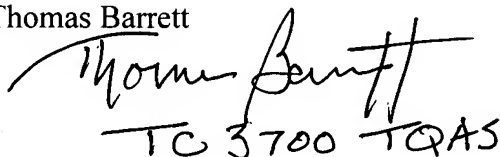
Conferees:

Corrine McDermott

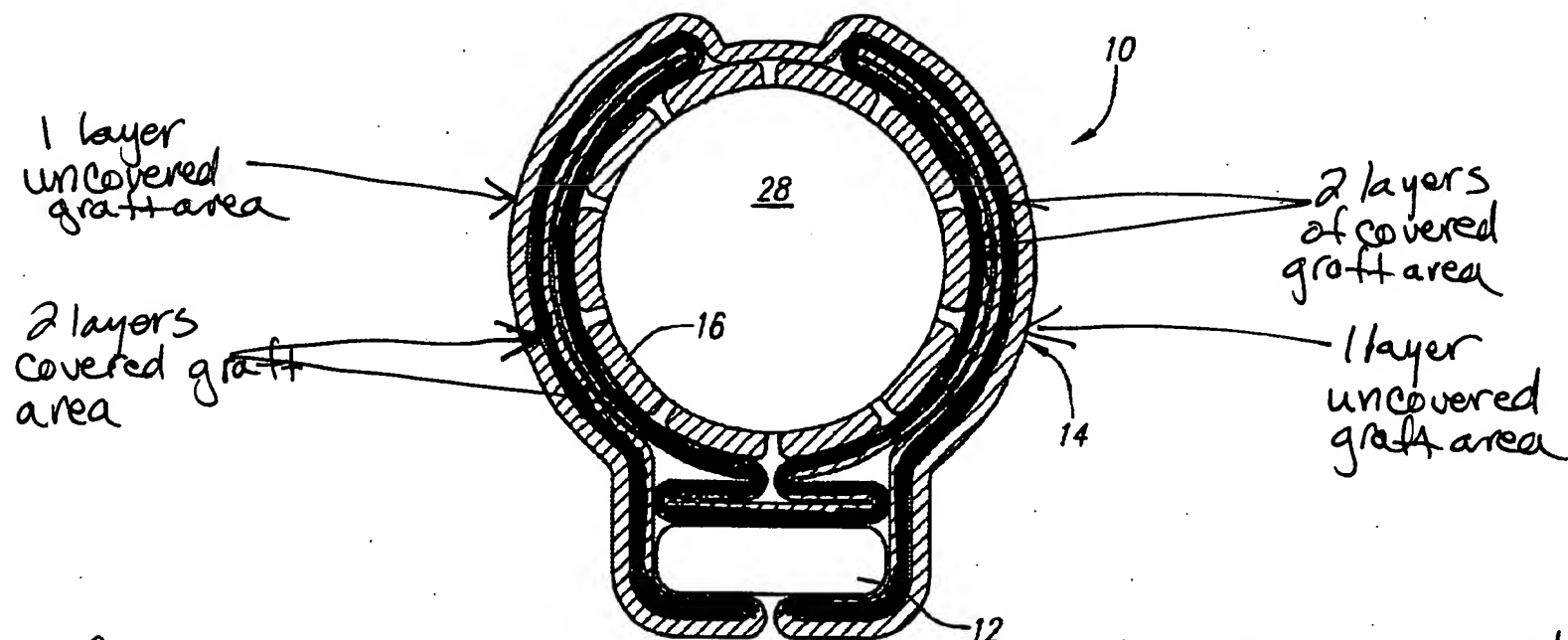


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TECHNOLOGY CENTER 3700

Thomas Barrett



TC 3700 TQAS



* figure shows majority, more than 50% of graft surface is covered by another layer or fold. **FIG. 3A**

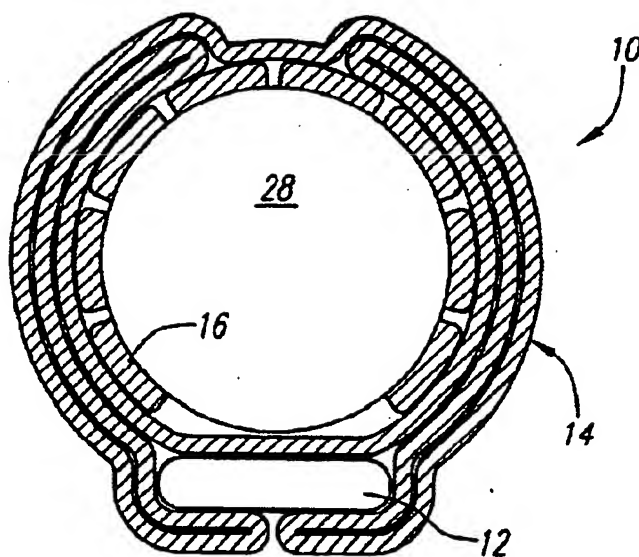
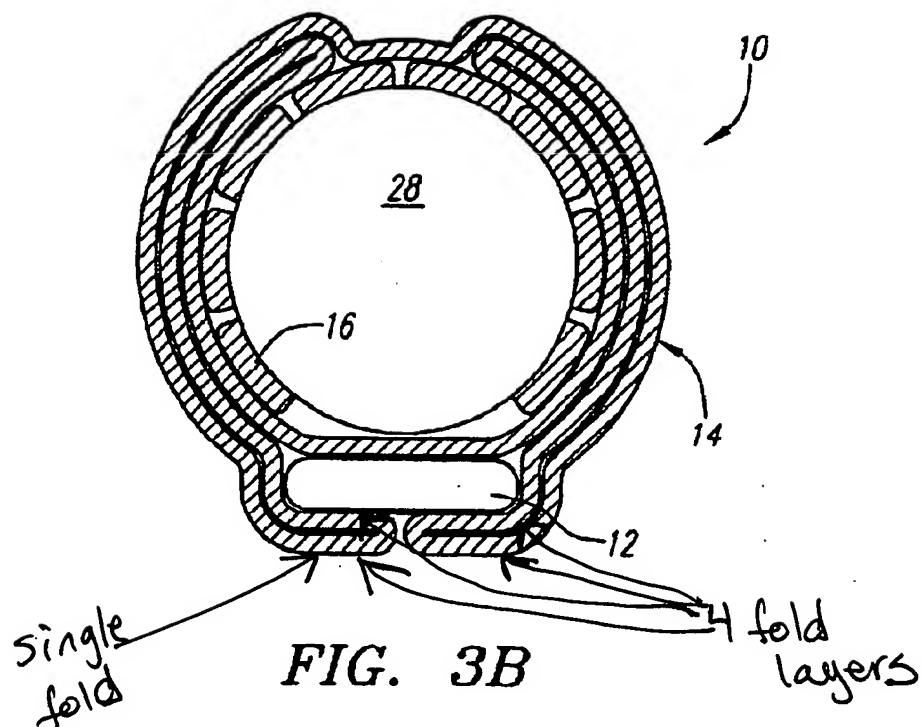
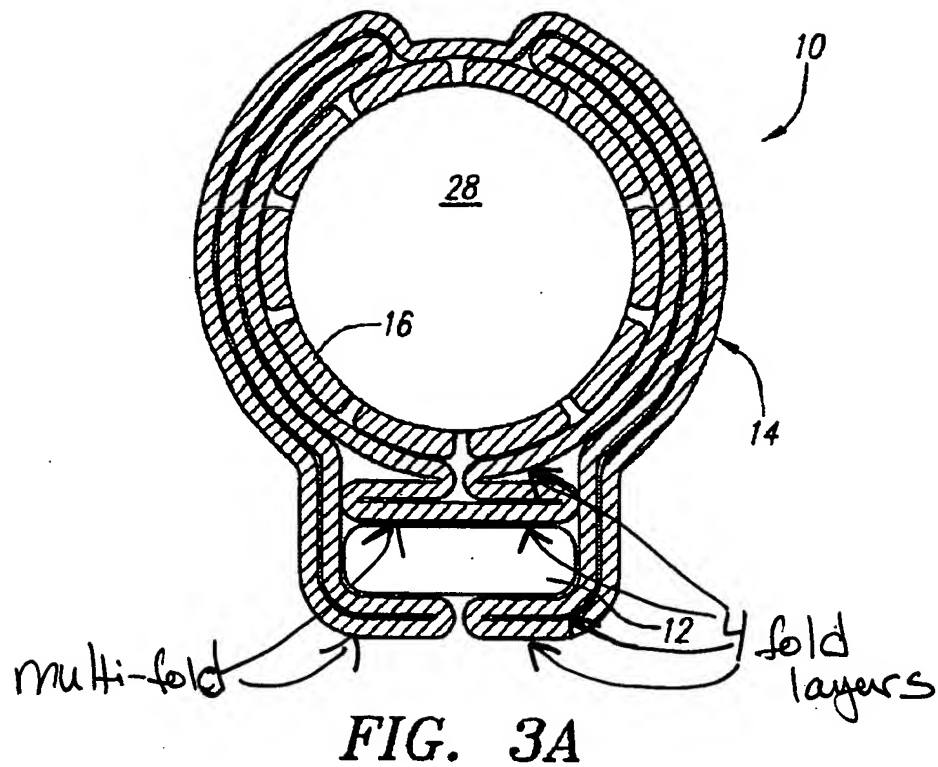


FIG. 3B



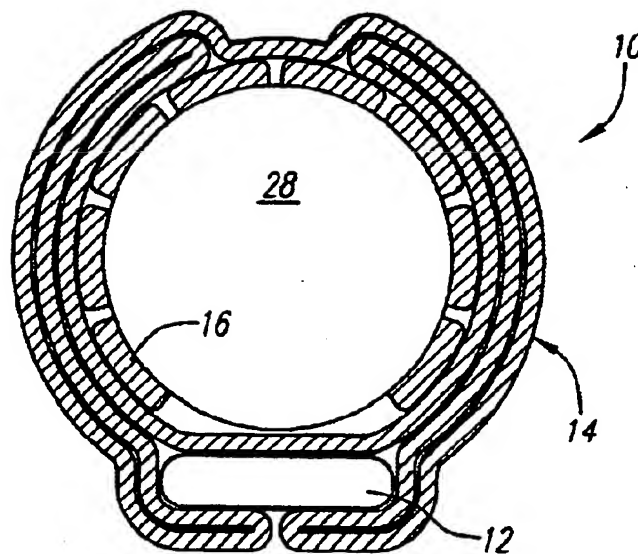
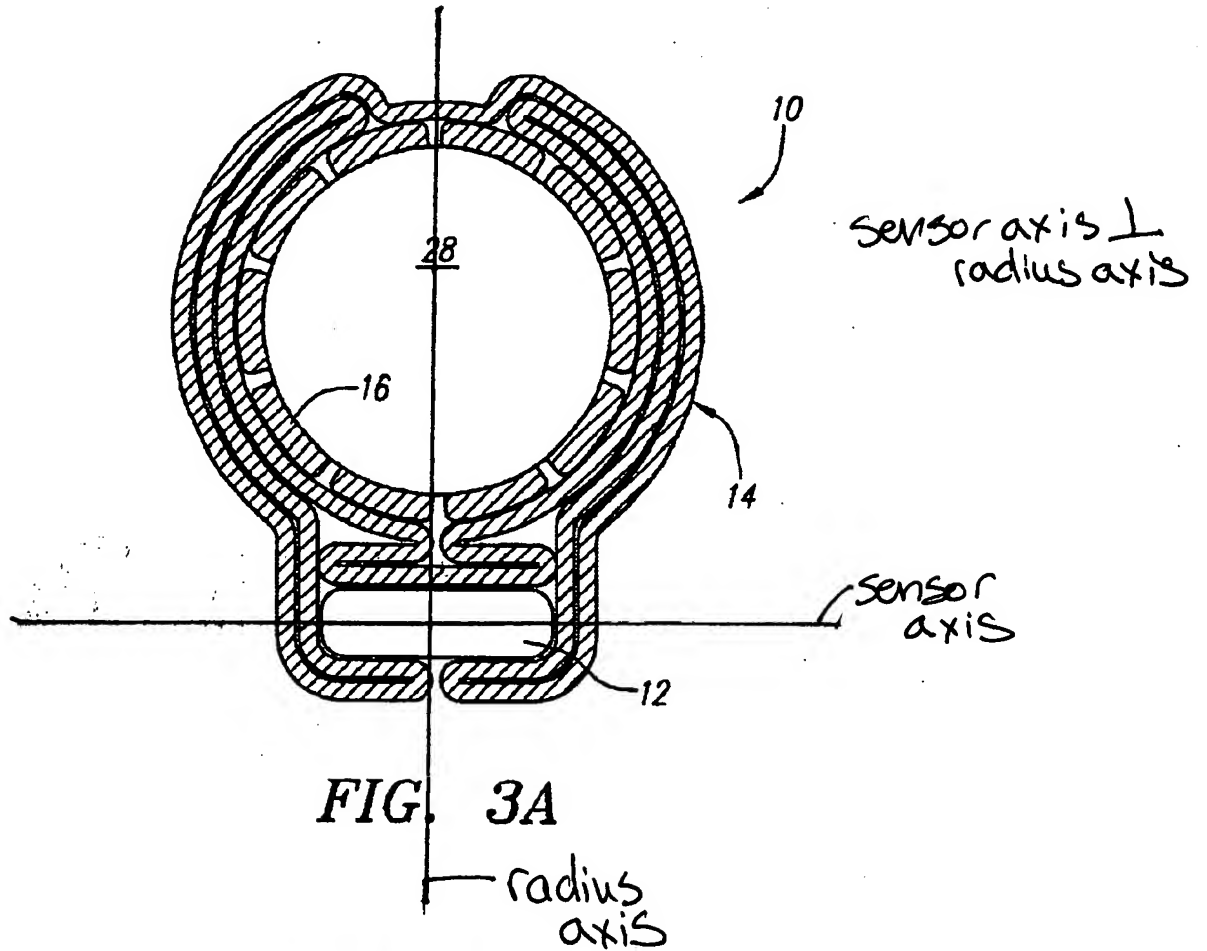
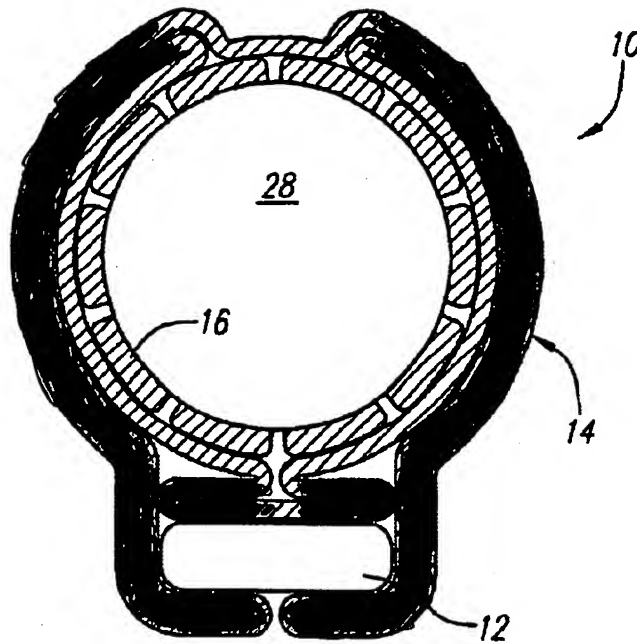


FIG. 3B



★ 4 legs of
"H" seen
shaded.

FIG. 3A

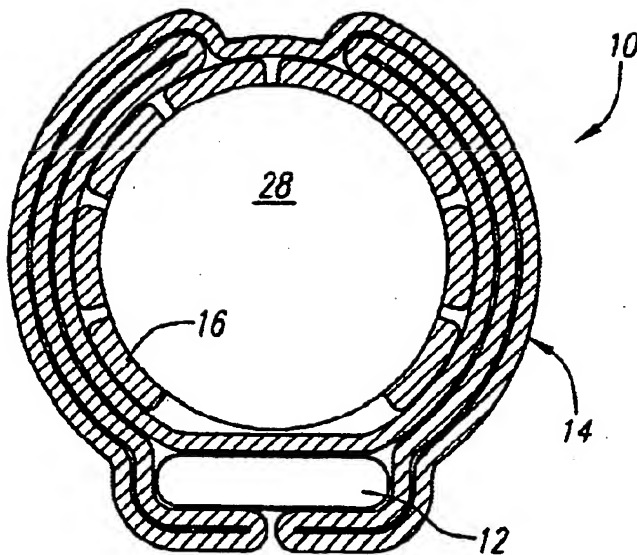


FIG. 3B